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September 8, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY
Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: FM Table of Allotments
Cheboygan and Rogers City, Michigan
MM Docket No. 00-69; RM-9850

Dear Ms. Salas:

Transmitted herewith on behalf of Northern Radio of Michigan, Inc. are an original and four copies of its "Reply Comments" filed in the above-referenced allotment rulemaking proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Andrew S. Kersting
Counsel for Northern Radio of Michigan, Inc.

ASK:mah
Enclosure
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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 00-69
Table of Allotments,	)	RM-9850
FM Broadcast Stations,	)	
(Cheboygan and	)	
Rogers City, Michigan)	)	

To: Chief, Allocations Branch

REPLY COMMENTS OF NORTHERN RADIO OF MICHIGAN, INC.

Northern Radio of Michigan, Inc. ("Northern Radio"), by counsel, hereby submits its comments in response to the "Counterproposal," filed June 16, 2000 ("Counterproposal"), by D&B Broadcasting L.L.C. ("D&B") and Fort Bend Broadcasting Company ("Fort Bend") (collectively, "Counterproponents") in the above-captioned proceeding. In support of these reply comments, the following is stated:

In response to a Petition for Rulemaking filed by Escanaba License Corp., the Commission issued a *Notice of Proposed Rule Making and Order to Show Cause*, 15 FCC Rcd 10292 (Allocations Branch 2000), proposing (i) the allotment of Channel 260C2 to Cheboygan, Michigan, as that community's second local FM service, and (ii) the modification of the license for Station WHAK(FM), Rogers City, Michigan, to specify operation on Channel 292C2 in lieu of Channel 260C2.

On June 16, 2000, Counterproponents filed their subject Counterproposal proposing, *inter alia*, that the license for Station WSRQ(FM), Bear Lake, Michigan, be modified to specify operation on Channel 260C1 in lieu of Channel 261A, and that Channel 260C1 be reassigned to Bellaire, Michigan, as that community's first local aural service.[1] For the reasons stated herein, the proposed substitution of Channel 260C1 for the existing Channel 261A allotment at Bear Lake, and the reassignment of Channel 260C1 to Bellaire, is technically defective and should not be adopted.

Counterproponents claim that the reallotment of Channel 260C1 at Bellaire, Michigan, can be made at the reference coordinates North Latitude: 45° 20' 48"; West Longitude: 85° 07' 46".[2] Counterproponents allege that the proposed allotment reference point is 25 kilometers north of the community of Bellaire, and that a transmitter operating from the allotment reference site would comply with the Commission's city-grade and minimum distance separation requirements. *Id.* However, as demonstrated in the attached engineering statement of William J. Getz, there are five (5) major terrain obstructions between the proposed allotment reference site and the community of Bellaire. *See* Getz Engineering Statement, p. 2. The most severe obstruction is located 32.7 kilometers from the allotment reference point at an elevation of 289 meters above ground. *Id.* From the Counterproposal's proposed allotment reference point, this terrain obstruction would require a tower height of 1,700 feet (518 meters) above ground in order to provide line-of-sight coverage to the entire community of Bellaire. *Id.* at 2-3. As the Commission has previously determined, the

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[1] On August 24, 2000, the FCC issued a *Public Notice*, Report No. 2431 (released August 24, 2000), announcing that the Counterproposal filed by D&B and Fort Bend would be treated as a counterproposal in the above-captioned proceeding, and affording interested parties 15 days in which to submit reply comments.

[2] *See* Engineering Statement in Support of Counterproposal, p. 4.

tower height necessary to obviate the significant terrain obstruction such as that involved in this case is unrealistic. Accordingly, the proposal to substitute Channel 260C1 for the existing Channel 261A allotment at Bear Lake, and the reassignment of Channel 260C1 to Bellaire, fails to comply with the line-of-sight coverage requirement contained in Section 73.315(b) of the Commission's rules.[3]

Furthermore, even assuming, *arguendo*, that the Commission were to conclude that the requirement of constructing a 1,700 foot tower for the proposed reallotment of Channel 260C1 at Bellaire would not render the Counterproponents' Counterproposal technically defective, Mr. Getz' attached engineering statement contains the results of an evaluation by John P. Allen, an airspace consultant, concerning the possibility of erecting a tower 1,700 feet above ground at the proposed allotment reference point. Mr. Allen's attached statement demonstrates that the tower height required to overcome the significant terrain obstructions between the proposed allotment reference point and the community of Bellaire would exceed Federal Aviation Administration obstruction standards by as much as 1,380 feet. *See* Getz Engineering Statement, Exhibit 2, p. 2. Therefore, the proposed reallotment of Channel 260C1 to Bellaire, Michigan, is technically defective because a major terrain obstruction between the proposed allotment reference point and the community of Bellaire would preclude line-of-sight coverage to the entire proposed community of license as required by Section 73.315(b) of the Commission's rules.

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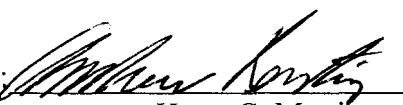
[3] *Jefferson City, Cumberland Gap, Elizabethon, Tennessee, and Jonesville, Virginia*, 13 FCC Rcd 2303, 2304 (Policy & Rules Div. 1998) (Commission found that a terrain obstruction requiring a tower 1,261 feet in height (384 meters) to provide line-of-sight coverage to all of the proposed community of license precluded compliance with Section 73.315(b) of the Commission's rules).

WHEREFORE, in light of the foregoing, Northern Radio of Michigan, Inc. respectfully requests that the Counterproposal filed by D&B Broadcasting L.L.C. and Fort Bend Broadcasting Company be DENIED.

Respectfully submitted,

NORTHERN RADIO OF MICHIGAN, INC.

By: 

Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

September 8, 2000

c:\ask...martin\rm\CheboyganRep.com.wpd

CARL T. JONES CORPORATION

ORIGINAL

STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF REPLY COMMENTS IN
OPPOSITION TO A COUNTERPROPOSAL
IN MM DOCKET NO. 00-69, RM-9946

Prepared for: Northern Radio of Michigan, Inc.

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, VA. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by the Northern Radio of Michigan, Inc., to prepare this statement and the associated exhibits as Comments in opposition to a counterproposal filed in the above-referenced MM Docket No. 00-69.

NPR Escanaba License Corp ("Petitioner") filed the original Petition to Amend the FM Table of Allotments, Section 73.202(b) of the FCC Rules seeking a second local service in Cheboygan, Michigan, and a change in the allotted channel at Rogers City, Michigan. On April 25, 2000, the Allocations Branch adopted a Notice of Proposed Rulemaking ("NPRM") setting forth the Petitioner's request to modify Section 73.202(b) of the FCC Rules.

On June 16, 2000, D & B Broadcasting, L.L.C. filed a multichannel counterproposal ("D & B Counterproposal") to the Petitioner's proposed arrangement of allotments. The FCC released a Public Notice on August 24, 2000, describing the nature of the D & B

Carl T. Jones Corporation
7901 Yarnwood Court, Springfield, Virginia 22153-2899 (703) 569-7704 Fax: (703) 569-6417

Counterproposal and established a reply comment date of September 8, 2000. This material is prepared as reply comments in opposition to the D & B Broadcasting, L.L.C. proposed channel 260C1 at Bellaire, Michigan.

Channel 260C1, Bellaire, Michigan (45-20-48 & 85-07-46)

According to the Engineering Report filed in support of the D & B Counterproposal ("D & B Engineering Report"), "The assignment of FM Channel 260C1 at Bellaire, Michigan can be made at reference co-ordinates N45-20-48, W85-07-46. This allotment site is 25 km north of the community of Bellaire, Michigan and a transmitter operating from this allotment site will fully comply with the Commission's city grade illumination and milage separation requirements".[1] It is submitted that the proposed Channel 260C1 allotment at Bellaire is technically defective because a major obstruction between the proposed allotment reference site and Bellaire would preclude line-of-sight coverage to all of Bellaire as required by Section 73.315(b) of the Commission's Rules.

Exhibit 1 is a computer-generated, 3-second terrain database, terrain profile from the D & B Counterproposal, Channel 260C1 allotment reference site toward Bellaire. As shown in Exhibit 1, there are five major terrain obstructions between the proposed allotment reference site Bellaire. The most severe obstruction is located 32.7 km from the allotment reference site at an elevation of 289 meters. From the proposed allotment reference site, the terrain obstruction in this instance would require a tower height of 1,700

[1] See D & B Broadcasting, L.L.C., Engineering Report, Page 4.

feet (518 meters) above ground level to provide line-of-site coverage to all of Bellaire. Consistent with FCC precedent, this is an unrealistic requirement to obviate a major terrain obstruction.[2]

To further substantiate the unsuitability of the proposed Bellaire allotment reference site, Exhibit 2 contains the results of an evaluation by a professional airspace consulting firm, concerning the possibility of a 1,700 foot above ground level tower at the proposed Bellaire allotment reference site. In addition to unrealistic tower height necessary to satisfy line-of-sight requirements considering FCC precedent, the required tower height is also unrealistic considering the required tower height would exceed Federal Aviation Administration obstruction standards by as much as 1,380 feet (see Exhibit 2). The Commission has specifically set forth, as an example of an unsuitable allotment reference site, sites in areas in which tower construction would necessarily present a hazard to air navigation.[3]

This statement and the attached Exhibit 1 have been prepared by me or under my direct supervision and are believed to be true and correct.

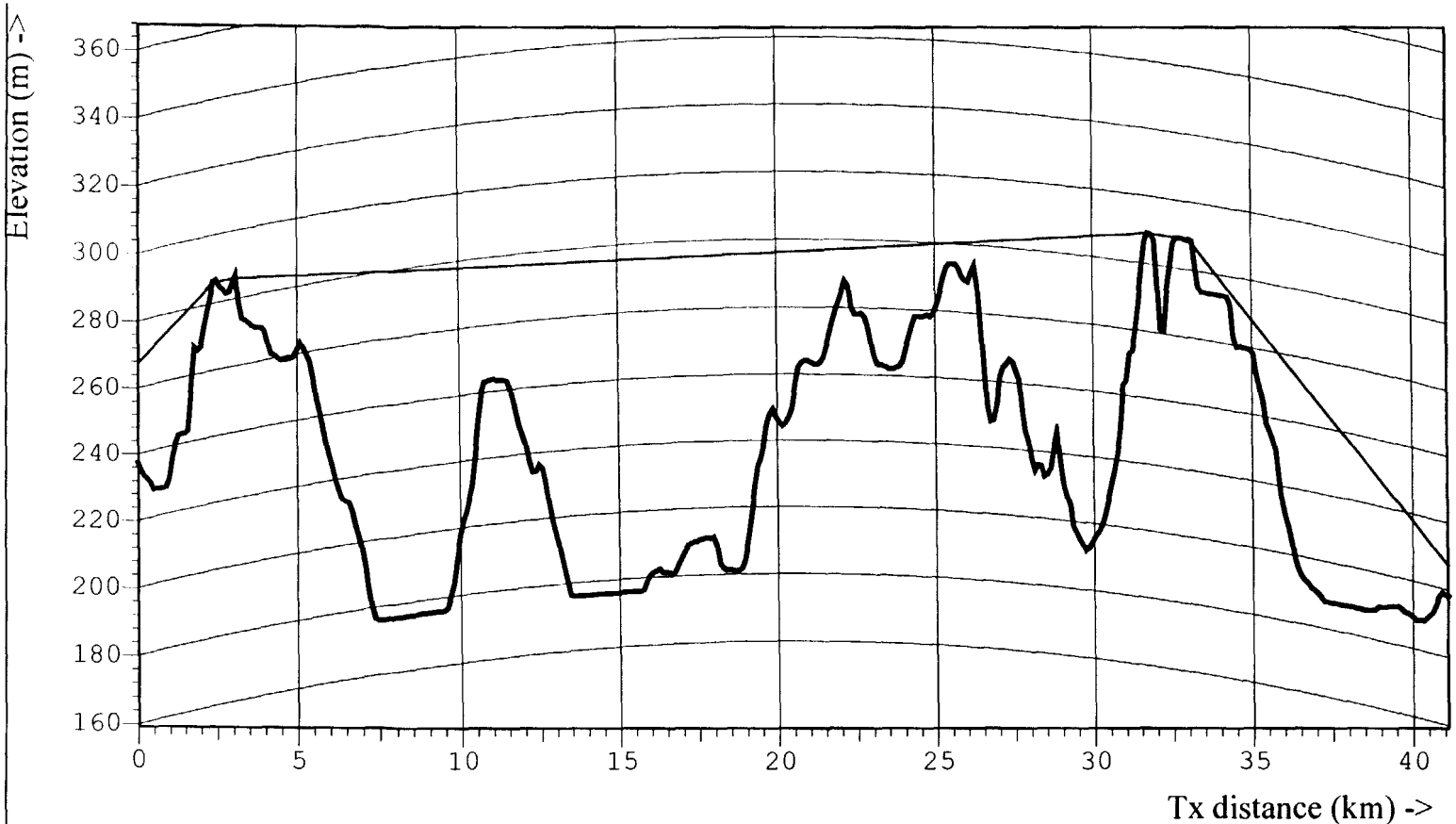
DATED: September 6, 2000

William J. Getz

---

[2] See Memorandum Opinion and Order, *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Jefferson City, Cumberland Gap, Elizabethon, Tennessee, and Jonesville, Virginia)*, MM Docket No. 94-116, Adopted January 21, 1998; Released January 30, 1998.

[3] See Report and Order, *In the Matter of Amendment of the Commission's Rules To Permit FM Channel and Class Modifications by Application.* MM Docket No. 92-159, Footnote 19, Adopted June 4, 1993; Released July 13, 1993.



SIGNAL™

Prop. model: FCC-FCC
Time: 90.00 % Loc.: 50.00 %
Margin: 0.00 dB
Climate: Continental Temperate
Groundcover: None
Atm. factor: none
K factors: 1.333, 0.500, 2.000

Reliability Analysis
Fade outage method:
Vigants-Barnett
C param. for Vigants-Barnett:
average prop. conditions: C=1
Adj. chan. interf.: -200.0 dBmW
External interf.: -200.0 dBmW
Dispersive fade margin: 80.0 dB
Div. type: unprotected 80.0 dB
Ant. spacing for diversity: 10.0 d
Rain outage method: Crane
Rain region: A

Transmitter Site: REF260C1	Name: REF260C1 -> CITY	Receiver Site: CITY
Name: Bellaire REF	Frequency: 99.9000 MHz	Name: Bellaire City
Location:	Polarization: vertical	Location:
N45°20'48.00" W85°07'46.00"	Length: 41.23 km	N44°58'49.00" W85°12'40.00"
Site elevation: 237.3 m	Number of obstacles: 5	Site elevation: 198.0 m
Antenna height: 30.0 m	Excess path loss: 71.1 dB	Antenna height: 9.1 m
Pointing azimuth: 189.0 deg	Atm. absorption loss: 0.0 dB	Pointing azimuth: 9.0 deg
Transmitter power: 30.00 dBm	Path loss for stats: 175.86 dB	Receiver threshold: 30.00 dBm
Trans. line loss: 0.00 dB	Flat fade margin: -175.86 dB	Trans. line loss: 0.00 dB
Other losses: 0.00 dB	Total fade margin: -175.86 dB	Other losses: 0.00 dB
Antenna gain: 0.00 dB	Annual fade outage: 31536000.00 s	Antenna gain: 0.00 dB
Antenna file:	Annual rain outage: 0.00 s	Antenna file:
Total ERP: 30.00 dBm	Link availability: 0.0000 %	Received signal level: -145.86 dBm

Notes

EXHIBIT 1

EXHIBIT 2

JOHN P. ALLEN

AIRSPACE CONSULTANTS, INC.

P.O. BOX 1008

FERNANDINA BEACH, FL 32035-1008*

JOHN P. ALLEN
MARY C. LOWE

TELEPHONE (904) 261-6523
FAX (904) 277-3651

September 6, 2000

Mr. Bill Getz
Carl T. Jones Corporation
7901 Yarnwood Court
Springfield, VA 22153-2899

Dear Bill:

Pursuant to your request, an aeronautical evaluation was conducted near the Bay Shore, MI area for your new proposed tall antenna tower. The aeronautical evaluation was conducted in accordance with the standards for determining obstructions to the navigable airspace as set forth in Subpart C of Part 77 of the Federal Aviation Regulations.

COORDINATES: Latitude 45-20-48.00 N - Longitude 85-07-46.00 W
(NORTH AMERICAN DATUM - 27)

COORDINATES: Latitude 45-20-48.03 N - Longitude 85-07-46.21 W
(NORTH AMERICAN DATUM - 1983)

HEIGHT: 778 feet AMSL 1700 feet AGL 2478 feet AMSL

The evaluation disclosed that the proposed site was located 6.64 nautical miles from the Charlevoix Municipal Airport reference point. The controlling aeronautical surfaces for the proposed site are the potential VFR Routes, the minimum vectoring altitude and the existing instrument approach surfaces.

The proposal as specified will exceed the standards of Part 77 as follows:

77.23(a)(1) by 1200 feet, its height in excess of 500 feet AGL

77.23(a)(3) by 800 feet, as it will require Minneapolis Center minimum vectoring altitude to be increased from 2,700 feet AMSL to 3,500 feet AMSL within 3 nautical miles of the proposed site

* SHIPPING ONLY 905 S. 8TH STREET FERNANDINA BEACH, FL 32034

77.23(a)(3) by 1380 feet, as it will effect straight in portion of the NDB or GPS Runway 27 standard instrument approach procedure serving the Charlevoix Airport

77.23(a)(3) by 1103 feet, as it will effect aircraft departing Runway 9 at the Lake Charlevoix Airport and proceeding in the direction of the proposed antenna tower site

When a structure is proposed at a height in excess of 500 feet AGL, you must consider the potential of being within a VFR Route. FAA defines VFR Routes as airspace available for visual flight rule (VFR) en route navigation in accordance with the criteria contained within FAR Part 91. VFR Routes consist of identifiable well defined natural or man-made landmarks (highways, power lines, railroads, etc.), specific VOR radials (Federal Airways), and airport transition (direct routes between airports). Proposed construction within an identified VFR Route (2 statute miles on either side of the route centerline) is limited by FAA to 500 feet AGL.

To determine whether or not these routes exist, requires a complete aeronautical study by FAA, including circularization of the proposal to the aeronautical community. Based upon the received responses to the proposal, FAA will then know whether or not a VFR route exists.

NOTE: FAA does not maintain a listing of VFR Routes, they instead rely upon the aeronautical community to respond to aeronautical circulars describing the type, location and height of the proposed structure. When the responses are received by FAA, they will validate the information (radar analysis, when possible). If you are within a VFR Route FAA will allow you relocate, reduce height or accept a determination of hazard.

The next aeronautical effect is to the Minneapolis Center minimum vectoring altitude. The present minimum vectoring altitude within 3 nautical miles of your proposed site is 2,700 feet AMSL. With 1,000 feet of required obstacle clearance and with mathematical rounding the allowable overall height for construction is 1,749 feet AMSL. With a proposed height of 2,478 feet AMSL, the minimum vectoring altitude will have to be increased from 2,700 feet AMSL

to 3,500 feet AMSL. For this to happen Minneapolis Center will have to agree with the requisite change.

The requisite height increase will also cause the FAA to lose a cardinal altitude (3,000 feet AMSL). Air traffic control uses cardinal altitudes (3,000, 4,000, etc.) to effect vertical separation between aircraft. The loss of a cardinal altitude can be considered by the FAA as a compression of the navigable airspace and could lead to user delays. In either case, the FAA would be justified in writing a determination of hazard.

The next aeronautical effect deals with the instrument approach surfaces (initial, final and missed) for the Charlevoix Airport. The proposed site is located within the final approach course for the NDB or GPS Runway 14 standard instrument approach procedure. The allowable height is determined by subtracting the required obstacle clearance (350 feet) from the published minimum descent altitude (1460 feet AMSL). Subtracting 350 from 1460 leaves 1110 feet AMSL for overall construction height with a certified site survey attesting to a "2-C" accuracy standard. The criteria for instrument approach procedures is contained within the United States Standard for Terminal Instrument procedures (TERPS). TERPS limits the vertical changes that can be implemented to accommodate proposed construction. The final approach portion of the effected procedures can not be changed to accommodate the requested height. The allowable overall height for construction for the procedures that can not be amended is 1,110 feet AMSL. To understand the protected airspace associated with these procedures, I have outlined the protected airspace in RED.

The last aeronautical effect is the departures from Charlevoix Airport. As it stands today, there are no restrictions or departure procedures for aircraft departing Runway 9 and proceeding in the direction of the proposed site. The FAA would be required to develop a departure restriction to accommodate the requested height. Developing departure restrictions is generally not that difficult, as most pilots do not fully understand the procedure and generally do not object. However, if the aeronautical community responds to the FAA describing the proposed alteration and advises the FAA that they can not comply, the FAA is justified in writing a determination of hazard. The aeronautical community would have to state that in order to

comply with the departure restriction they would have to either off load fuel, passengers or baggage. I have never seen this statement offered to the FAA, however, there is always a first time.

For your information, pilots have the sole responsibility to visually acquire obstacles and avoid them. However, there are times because of reduced visibility and/or low cloud ceilings the pilots can not visually acquire an obstacle and avoid it. In those circumstances the FAA is required to develop a departure restriction consisting of a cloud ceiling and visibility requirement, a rate of climb above the normal 200 feet per nautical mile or maintain a specific heading (runway heading) until leaving a specified altitude.

In conclusion, the proposal does exceed the standards of Part 77. The FAA will be required to circularize this proposal to the interested aeronautical community for their comments, prior to issuing a determination. Any proposed height above 1,110 feet AMSL will require the FAA to adjust existing aeronautical procedures (NDB or GPS Runway 27). The potential for adjusting this aeronautical procedure, in my opinion does not exist. Relocating outside of the depicted airspace, the allowable height will increase from 1,110 feet AMSL to 1,749 feet AMSL. Generally speaking, the FAA's Great Lakes Regional Office does not go along with redesigning instrument approach procedures to accommodate proposed construction. If you moved outside of the final approach trapezoid to the northeast, the allowable height would increase to 1,849 feet AMSL and with full cooperation from the FAA the height could be increased to 2,049 feet AMSL. If the FAA does object the allowable height for construction will only be 1,849 feet AMSL. The probability of over coming these objections, in my opinion, will be real difficult. The FAA to sustain there position is only required to demonstrate that one aeronautical operation per day would be effected by the required changes.

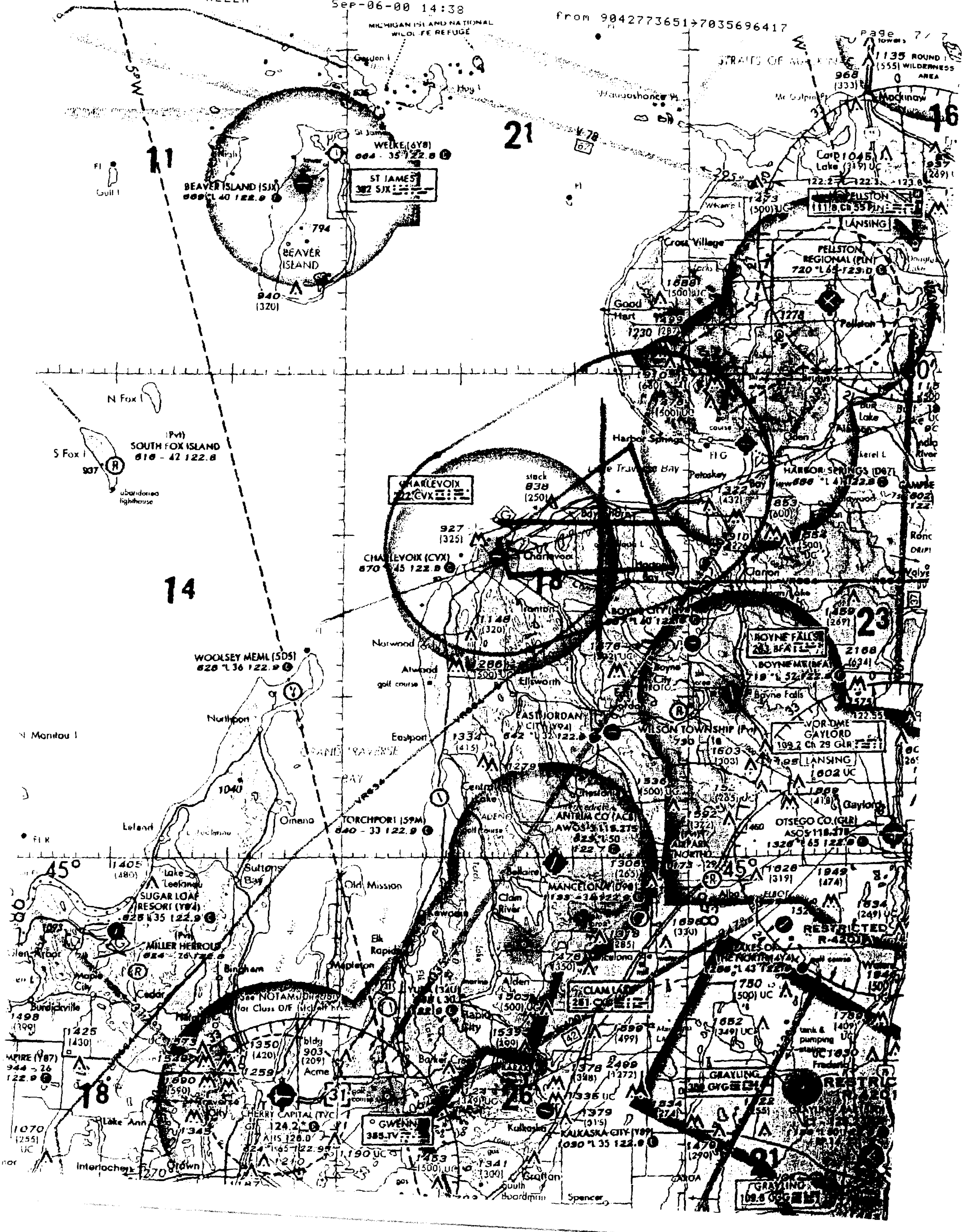
Regarding the minimum vectoring altitude, with full FAA cooperation the aeronautical surface could be increased from 2,700 feet AMSL to 3,000 feet AMSL. At 3,000 feet AMSL, the FAA would not lose a cardinal altitude. Without FAA's cooperation, the allowable height for proposed construction will remain at 1,749 feet AMSL.

If there are any questions regarding the evaluation, please do not hesitate to call.

Sincerely,

John P. Allen
President

Enclosures


MICHIGAN ISLAND NATIONAL WILDLIFE REFUGE
BEAVER ISLAND (SJX)
ST JAMES
BEAVER ISLAND
N Fox I
S Fox I
SOUTH FOX ISLAND
abandoned lighthouse
CHARLEVOIX
CHARLEVOIX (CVX)
WOOLSEY MEML (5D5)
Northport
N Manitou I
Leland
Omena
TORCHPORT (59M)
Old Mission
SUGAR LOAF RESORT (Y04)
MILLER HERROLD
Norwood
Atwood
Ellsworth
EAST JORDAN CITY (Y94)
Eastport
WILSON TOWNSHIP (Pvt)
ANTRIM CO (ACB)
MANCELONA (D98)
Bellaire
Clam River
Alden
Elk Rapids
Bingham
Cedar
Burdickville
Acme
CHERRY CAPITAL (TVC)
GWENN
Kalkaska
KALKASKA CITY (Y89)
Interlochen
South Boardman
Spencer
Grayling
GRAYLING
Harbor Springs
Petoskey
HARBOR SPRINGS (MGN)
PELLSTON
PELLSTON REGIONAL (PLN)
Pellston
Cross Village
Good Hart
BOYNE FALLS
BOYNE MTN (BFA)
Boyne Falls
GAYLORD
Gaylord
OTSEGO CO (GLR)
LAKES OF THE NORTH (4Y4)
RESTRICTED R-4201
Mackinaw City
LANSING
CLAM LAKE
STRAITS OF MACKINAC
14
18
21
23
26
31
45°

CERTIFICATE OF SERVICE

I, Mary Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 8th day of September, 2000, copies of the foregoing "Reply Comments of Northern Radio of Michigan, Inc." were hand delivered or mailed first-class, postage pre-paid, to the following:

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Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 3-A266
445 Twelfth Street, S.W.
Washington, DC 20554

Ms. Kathleen Scheuerle*
Allocations Branch
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(Counsel for Northern Radio Network Corporation)

Lake Michigan Broadcasting, Inc.
Radio Station WKLA
215 Harbor Drive
Ludington, MI 49431

Mary Haller
Mary Haller

* Hand Delivered